Supreme Court, U.S.
FILED

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No.

In the
SUPREME COURT OF THE UNITED STATES

October term, 1997

Colonel Frances S. Norris MD,
Petitioner,

v.

United States Department of Defense (DOD),
Army Board of Correction of
Military Records (ABCMR),
Office of the Army Surgeon General,
William Perry, ex-Secretary of DOD,
David Kinneer, director of ABCMR,
Alcide LaNoue, Surgeon General of the Army,
Respondents.

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on Petition for a Writ of Certiorari to the
United States Court of Appeals for the
District of Columbia Circuit

PETITION FOR A WRIT OF CERTIORARI

Frances S. Norris JD
2308 41st St. NW #203
Washington, D.C. 20007
(202) 333-5613

Defendants got annual increases in pay and benefits for army doctors from Congress, by saying low pay caused doctors to quit, and caused "war-stopping" doctor shortages and war-unreadiness.

But Command doctors caused the doctor shortages and the war-unreadiness, by discharging doctors thru acts of fraud, obstruction of justice and bribery, in order to extract annual increases in pay and benefits from Congress.

Petitioner sued the principals of the medical racketeers under RICO. Sovereign immunity was invoked to dismiss the suit.

ISSUE: DO MILITARY HEALTHCARE RACKETEERS HAVE SOVEREIGN IMMUNITY TO RICO?

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THE SUPREME COURT OF THE UNITED STATES

Colonel Frances Norris MD,
Petitioner/Plaintiff,
v.
U.S. Department of Defense (DOD),
Army Board for Correction of
Military Records (ABCMR),
Office of the Army Surgeon General,
William Perry, ex-Secretary of DOD,
David Kinneer, Director of ABCMR,
Alcide LaNoue, army Surgeon General,
Respondents/Defendants.

PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully asks this Court to grant a writ of certiorari to review judgment of the U.S. Court of Appeals for the District of Columbia Circuit.

OPINIONS BELOW

District Court dismissed by invoking sovereign immunity, and by deciding that Defendants did not commit predicate acts. App.3-10. Circuit Court affirmed (App.1, 2) and denied rehearing. App.10a.

JURISDICTION

Federal court jurisdiction arises under 18 U.S.C.sec.1964(c). The court of appeals entered judgment on May 5, 1997. Petition for rehearing and suggestion for rehearing en banc were denied on July 23, 1997. Jurisdiction of this Court is invoked under 28 U.S.C. sec.1254(1).

STATEMENT OF THE CASE

Many doctors told Congress about Command abuse. Senator Glenn told DOD-IG[1] to

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1. Acronyms used here are explained in App.37. "App." refers to appendices hereto. "DD#" refers to the district

investigate, because the abuse if true nullified costly programs to stop doctor shortages. Fifty doctors testified to DODIG. Some sent their testimony to Plaintiff who had enrolled in law school.

One witness, a psychiatrist posted in Europe, testified that medical Command institutionalized malpractice, falsified QA records, 'lost' whistleblower and IG reports, and used IGs to cover up Command abuses and target whistleblowers. An IG told him Command retaliated against whistleblowing doctors "for the good of the institution". His hospital commander ordered him to diagnose mental disease in a fellow doctor. When he refused, the commander sent him to an undesirable post and sent a reprimand to his personnel file. He quit the army to escape more damage to his medical reputation.

An army surgeon, who was a regional QA-reviewer, testified that medical Command made doctors defame each others' work and recommended tactics described in HOW TO SWIM WITH SHARKS. He described Command abuse of some 50 doctors, and cover-up of that abuse by Dr LaNoue in Congress, Europe, and the legal branch of the Armed Forces Institute of Pathology (AFIP).

DODIG reported that OTSG secretly placed blame for malpractice in 'credentials files' that were secret and illegal, put inappropriate criticism in these credentials files, abused Command authority over bonus payments, and retaliated for

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1 (cont'd):
court docket number. "Exh." refers to exhibits submitted with DD#17.

reports of army hospital Command mismanagement and abuse. App.17,18.

DODIG reported back to Congress on six doctor witnesses, but not on forty-four including Plaintiff. He refused to send Plaintiff's reports of fraud and other healthcare crimes to army criminal investigators. Instead he sent them to the ABCMR and army IG for continued inaction, after he testified to Congress that Service IGs rubber-stamp Command, ABCMR has a bad record, and COs retaliate for reports of their wrongdoing.

Surgeon generals told Congress each year that army doctors quit due to low pay. They said Senators caused war unreadiness and "war-stopping" doctor shortages, by underpaying army doctors.

But medical commanders created the doctor shortages by discharging doctors and by abusing them until they quit. Their purpose was to keep getting their yearly pay increases, delayed retirement age, money for the USUHS military medical school, etc. They succeeded. App.26.

A proven example of fake army doctor shortages is the one in nuclear medicine, Plaintiff's specialty. In 1988 DOD reported a surplus of 12 nuclear physicians in 1987, and predicted a shortage by 1989. App.19. OTSG fulfilled that prophecy and created that shortage in 1988, by discharging the 12 specialists, including Plaintiff. It replaced them with untrained radiologists who it knew misdiagnosed 33% of nuclear patients, and fatally harmed many soldiers. App.20-21.

A proven example of systemic groundless discharge of doctors is the groundless

discharge of Plaintiff. App.27-28.

A proven example of systemic cover-up by army regulatory, personnel and medical systems, of the forced and groundless nature of army-doctor-discharges, is Plaintiff's tampered personnel record.

It covers up involuntariness by omitting requests for extended duty, command denials of requests, and appeals of denials.

It misrepresents voluntariness of discharge, by:- containing a false contract agreement to discharge; deleting promotion to colonel; and inserting forged lower-rank promotion that was an incentive to quit.

It covers-up falseness of discharge grounds, and actively falsifies grounds, by:- deleting 23 commendations that disprove discharge grounds; recording defamations disproven by rebuttals; concealing off record most rebuttals disproving discharge-grounds; deleting key documents from rebuttals on record; and inserting forged and false documents that weaken rebuttals on record.

A proven example of the Command abuse of army doctors to make them quit is the abuse heaped on Plaintiff. Command cancelled her hard-earned good assignment. It ordered a bad assignment. The new hospital commander immediately narrowed hospital privileges. He soon suspended all privileges. He initiated and unduly influenced 3 audits of Plaintiff's radiation-safety records, two of which disproved defamation in the third one by a nuclear physician whose army career and specialty-shortage-bonus hinged on defaming Plaintiff. He locked Plaintiff out

of her hospital office and defense documents before the Peer Review Hearing on his suspension of her privileges. He suborned false witness at the Hearing. He unduly influenced the Hearing through a deputy who alone opposed exoneration.

He falsified Peer Review Hearing as recommending psychiatric *treatment*. He ordered Plaintiff to stop investigating this new accusation-without-notice. He put his accusations in the Peer Review Hearing Report, but omitted mandatory factfinding that disproved them. He buried her exoneration under much defamation. He mailed the falsified Hearing Report, defamations, and bonus-bribed audit report, to OTSG's secret files.

He blocked her request for extended duty and then lied to paymasters that she hadn't requested extended duty and was therefore not eligible for bonus-pay. He induced sabotage of patient-safety and radiation-safety, and used the sabotage to discharge Plaintiff. He blocked Plaintiff's discipline of the saboteurs, and retaliated for her attempted discipline by calling it worker-abuse on her OER.

He retaliated when Plaintiff told OTSG about his abuse of Command authority and mismanagement, by retaliatory OER and LOR, retaliatory discharge (App.22), retaliatory psychiatric commitment and, after psychiatrists diagnosed her as normal, by forgery of mental diseases secretly put in her record. App. 29-31.

Each Defendant committed, aided and abetted, and conspired in predicate acts of extortion, bribery, obstruction of

justice, mail fraud and wire fraud,[2] by endorsing described predicate acts of hospital COs, and the other defendants.

DR LANOUE committed healthcare-mail-wire fraud by withholding service he owed the public as army surgeon general and deputy surgeon general, when he damaged war-readiness and army healthcare entrusted to him, by:- (1)creating shortages of army doctors who were badly needed; (2)sabotaging, suspending, discharging, and committing army doctors to psychiatric wards for nonmedical political purposes (App.25); (3)shifting practice from specialists to untrained malpractitioners who he knew injured military patients, for purposes of extortion; (4)abusing Command power over hospital admissions, diagnoses, psychiatrists and records, by using them to discredit and punish those witnessing to army healthcare fraud, other crimes, mismanagement and malpractice (App.32); (5)writing advice to ABCMR to keep on record forged psychiatric diagnoses as "original diagnoses" (App.32), in order to discredit reports of Command healthcare-crimes and malpractice as products of mental disease; (6)lying by phone to ABCMR to discredit said reports as due to incompetence that justified discharge (App.24); (7)advising ABCMR not to correct forged and falsified records, or remedy groundless discharge (App.23-4,32), in order to promote and conceal his extortion of Congress with fake doctor shortages.

2.18 U.S.C.201 (bribery). See App.12; 18 U.S.C.1951 (extortion). See App.13; 18 U.S.C.1503 (omnibus obstruction of justice), App.12; 18 U.S.C.1341 and 1343 (mail and wire fraud).

He organized extortion by appointing:- (1)hospital commanders to abuse and discharge doctors and create doctor-shortages; (2)IGs to coverup commander abuses and to target witnesses for retaliation; (3)agents to lie at Congress, hospital peer review, ABCMR and other U.S. proceedings about Command abuse and abused army doctors; (4)agents to lie to Congress in order to:- block passage of whistleblower protection law, to block judicial review of outlawed retaliations, and to cheat whistleblowers of statutory protection (App.33-35), in order to promote and cover-up hospital commander retaliations that in turn promoted and covered-up his extortion of Congress.

Dr LaNoue directly extorted Congress when he testified that redistributing authorizations would cannibalize AMED.

He bribed appointees with bonuses and benefits to further his extortion.

He commits obstruction of justice by:- (1)hiding malpractice and healthcare crime in secret 'credentials' files; (2)not reporting DOD malpractitioners as law requires him to do;[3] (3)not sending reports of healthcare crime to army criminal investigators as law requires him to do;[4] (4)hiding a lawyer's AFIP report of healthcare fraud and malpractice from army criminal investigators; (5)silencing the AFIP witness by threat-

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3. HCQIA requires DOD hospitals to report malpractitioners, in compliance with Sections 11131(c) and 11133(c).App.14.
4. 18 U.S.C. 1518(a)(b) bans withholding reports of healthcare crimes from the armed forces criminal investigators.

ening discharge; (6)concealing army doctor and IG reports of healthcare crimes and malpractice; (7)punishing, discrediting, and chilling doctor-witnesses with retaliations banned by mili tary witness-protection law.[5]

He obstructs justice for Plaintiff, by:- (1)concealing proof that OTSG used forgery and falsehoods to discharge her and deny reinstatement; (2)telling ABCMR to keep forged psychiatric diagnoses on record; (3)endorsing retaliatory discharge (App.22) that violates military witness-protection law; (4)hiding Command exoneration that protects a Command-coopted saboteur; (5)hiding audiotaped disproof of grounds used to deny extended duty; (6)hiding her credentials file; (7)not expunging falsehoods therein, which violates army regulation requiring him to do so.

MR KINNEER committed, aided, abetted, and conspired in extortion and bribery, thru fraud and obstruction of justice.

He committed mail-wire fraud that withheld service owed the public as director of ABCMR, by:- (1)mailing his written denial of appeals to correct records and to remedy discharge based on grounds that he helped to fabricate and therefore knew were false; and (2)adopting telephonic lies to avoid correcting records and remedying groundless retaliatory discharge. App.23-4,32,36.

He committed healthcare crimes of ob-

5.18 U.S.C. 1034 as amended in 1991 protects soldiers who blow the whistle to chain of command from the adverse actions (App.16) heaped on Plaintiff and others (App.25) for whistleblowing.

struction of justice and mail fraud, when he covered-up groundlessness of discharge and misrepresented grounds for discharge, by:- (1)removing 23 commendations and other documents from Plaintiff's record that disprove discharge grounds; (2)hiding off record most rebuttals of defamations; (3)inserting false documents into rebuttals that he put on record; (4)endorsing false grounds of discharge (App.23-4); (5)denying remedy for retaliatory discharge and non-reinstatement (App.36), in obstruction of military whistleblower witness-protection law. App.15-6.

MR PERRY committed, aided and abetted, and conspired in the five predicate acts when he denied Plaintiff's requests to:- (1)remedy groundless discharge; (2)remedy retaliatory discharge for protected reports of healthcare fraud, abuse and malpractice; (3)remove forged diagnoses of mental disease put in her record; (4)return 23 commendatory documents stolen from her record; (5)remove defamation from her record; (6)divulge her physician credentials file; (7)expunge defamation in that credentials file.

He obstructed justice, and so aided in ongoing commission and coverup of past healthcare crimes and malpractice, when he violated Military Whistleblower Protection Law of 1991 by:- (1)not writing regulations to protect military whistleblowers due by June 1992, until August 1995; (2)obstructing that law's mandate to give Plaintiff DODIG's action report on her testimony to him (App.15); (3)obstructing that law's mandate to put in DOD's Action Report to Congress Plaintiff's comment on DODIG's inaction on her testimony (App.16 at E); (4)not

enforcing that law (App.36); (5)endorsing ongoing violation of that law by non-reinstatement retaliating for Plaintiff's reports. App.36.

Mr Perry's above obstructions of justice aided and abetted the other predicate acts by allowing unlawful retaliations[6] to continue punishing, chilling, and discrediting army members who expose, or could expose, the predicate acts.

He obstructed justice by not sending Plaintiff's reports of military healthcare crime to armed forces criminal investigators,[7] and by concealing from the federal databank reported DOD malpractitioners, in violation of law requiring him to report them. App.13.

The above facts were proven by party admissions and party statements in 568 exhibits in Motion For Partial Summary Judgment that Defendants Violated RICO, and in appendices of other pleadings.

Respondents claimed sovereign immunity and impugned the petitioner/plaintiff, but they did not deny or try to rebut the above facts.

SUMMARY OF ARGUMENT

Sovereign immunity for military healthcare racketeers contradicts express RICO waiver of sovereign immunity. It deprives sovereign States and citizens of their right under RICO to combat army racketeers who extort Congress, subvert their central government, and greatly endanger their country to extort money.

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6. See n.5 above.
7. See 18 U.S.C. 1518, at App.13.

RICO WAIVES SOVEREIGN IMMUNITY

The courts below held that RICO does not waive sovereign immunity for federal racketeers as it does for state racketeers. App.4,1. But RICO expressly waives federal sovereign immunity in Section 1961(1)(b) (App.14) by subjecting federal entities to civil suit,[8] specifically by targetting them for violation of laws that expressly forbid federal entities from bribery, obstruction of justice and extortion.[9]

Each Defendant is an express target of RICO because each directly or indirectly committed, aided,abetted, and conspired in:- (a)extortion of Congress by federal agents, which violates 18 U.S.C.sec.1951 (App.13); (b)bribery by army doctors who took and gave bonus-bribes to discharge doctors, which violates 18 U.S.C.

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8. Accord, G.A.O. v. G.A.O. Personnel App. Bd., 698 F.2d 516, 524-26,n.49 (D.C.Cir. 1983) (law waived sovereign immunity by subjecting GAO to suit). See, Sierra Club v. Lujan, 931 F.2d 1421, 1426 (10th Cir.1991)(a statute waives sovereign immunity by subjecting a U.S. entity to civil suit); U.S. v. Penna.Dept. of Env't'l Resources, 778 F.Supp. 1328, 1334 (M.D.Pa. 1991);N.Y. State Env't'l Conservation v. U.S. Dept.of Energy, 772 F.Supp.91, 98 (N.D.N.Y. 1991); Metro Sanitary Dist. of Chicago v. U.S.Navy, 722 F.Supp. 1565 (N.D.Ill.1989); Ohio v. U.S. Dept.of Energy, 689 F.Supp. 760, 765-67 (S.D.Ohio 1988); State of Maine v. Dept.of Navy, 702 F.Supp.322, 323 (D.Me. 1988);State of Cal.v.Navy, 631 F.Supp.584 (N.D.Cal. 1986).

9. See n.2 and related discussion.

U.S.C.sec.201 (App.12), and (c)systemic obstruction of justice violating 18 U.S.C. sec.1503 (App.12), committed by:-

(1)DOD hospitals that conceal malpractitioners, in obstruction of justice under 42 U.S.C.11152 (App.14);

(2)military officers who hide reports of military healthcare crime from armed forces criminal investigators, obstructing 18 U.S.C. sec.1518 (App.13);

(3)ABCMR, its director Mr Kinneer, and its agents, who do not correct military records, and instead falsify, forge, alter, ignore, destroy and hide the truth (App.23-4,27-30; DD#16), and thus obstruct the ABCMR truth-in-records law, 10 U.S.C. sec.1552 (App.5);

(4)medical commanders who discharge doctors to create shortages (App.19, 27-8), violating the 10 U.S.C.sec.1161 law against unwarranted discharge of commissioned officers (App.14).

(5)DOD and military officers who lied to Congress (App.33-5) to block passage of, gain control of, and neuter 10 U.S.C. sec.1034 protection of military witnesses from retaliation (App.15), thus obstructing that law and the general law on lying to Congress (App.12);

(6)DOD agents who now violate that military witness-protection law, 10 U.S.C. 1034, by:-

(a)retaliating against Plaintiff (App.22) and other whistleblowers (App. 18,25) with adverse personnel actions that violate that law (App.16);

(b)not remediating illegal retaliation against witnesses (App.36);

(c)not writing regulations to enforce

that law until exposed 3 years after they were due by order of that law (App.16);

(d)not giving to Plaintiff DODIG's action-report on her testimony as the military whistleblower law required (App.15 at e-1);

(e)not including in DOD's action-report to Congress, Plaintiff's comment on DODIG action/inaction on her reports as that law required (App.16 at E);

RICO also waives sovereign immunity according to implied criteria of the Supreme Court.[10] RICO's purpose, subject matter and context show clear intent to attack all rackets. RICO legislators condemned all government racketeers without exception, eg., "corrupt alliances ... with police, prosecutors, courts and legislatures".[11] The U.S. Department of Justice, as the Executive's RICO-enforcer, said RICO opted to let the U.S. sue or be sued under RICO.[12] Thus, RICO also meets criteria of implied sovereign immunity.

Respondents sued in individual capacity claim sovereign immunity. But they are personally liable, and sovereign immunity does not extend to their personal li-

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10. Cooper v. U.S., 312 S.Ct. 742,743 (1941)(purpose, subject matter, context, legislative history, and Executive interpretation indicate intent to make the U.S. suable.)
11. 116 Cong.Rec.586 (1970). See also, id. at 601, 606-07, 962, 35199-200.
12. U.S. v. Bonnano Organized Crime Family, 879 F.2d 20, 26 (2d Cir.1989).

ability;[13] their statutory violations are *ultra vires* acts unshielded by sovereign immunity;[14] and last, RICO waives sovereign immunity for their extortion, bribery and obstruction of justice.

The Supreme Court said RICO waives even sovereign immunity granted by the Constitution,[15] a grant surely more potent than judicial grant of sovereign immunity. This Court counseled against absurd construction of RICO.[16] The Circuit below said the *practical effect* of saving Treasury money is the basic reason for sovereign immunity. [17]

Here, its practical effect of great harm to Treasury and Nation makes sovereign immunity untenably absurd. This suit, and prosecution based on issues precludable by this suit, can stop extortion of $billions from the Treasury, restore forfeited $billions to the Treasury, and most importantly, stop systematic subversion of the standing army that can destroy the Treasury and U.S.

Most Circuits agree that RICO waives sovereign immunity for government *qua*

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13. Hafer v. Melo, 112 S.Ct.358 (1991)
14. Navy, Marshall & Gordon v. U.S. Int. Development Cooperation, 557 F.Supp. 484, 488 (D.D.C.1983).
15. U.S. v.Gillock, 100 S.Ct.1185,1193 n.11 (1980).
16. United States v. Turkette, 101 S.Ct. 2524, 2527 (1981).
17. Navy,Marshall, 557 F.Supp., at 488.

government.[18] Many courts also agree that federal statutes expressly waive federal sovereign immunity by bringing U.S. entities within their scope,[19] as RICO does in its Section 1961(1)(b) predicate acts (App.13) of bribery, obstruction of justice, and extortion.

District Court cited unpublished, overruled and tenuous authority to dismiss this case. App.5. The Circuit Court also misplaced reliance on tenuous authority. App.2. To wit: U.S.v. Bonnano is overruled.[20] Andrade v. Chojnacki[21] followed the overruled Bonnano. Saltany v. Reagan[22] was an audacious suit by an alien against the U.S. for bombing Libya, in which a RICO claim was dismissed without citation or analysis

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18. U.S. v.International Brotherhood of Teamsters, 3 F.3d 634,638 (2d Cir.1993); U.S. v.Vignola, 605 F.2d 1119 (3d Cir.1979); U.S. v.Altomare, 635 F.2d 5,67-8 (4th Cir.1980); Illinois Dept. of Revenue v.Phillips, 771 F.2d 312 (7th Cir.1985); Bieter v. Blomquist, 987 F.2d 1319 (8th Cir.1993); U.S. v.Freeman, 6 F.3d 586 (9th Cir.1993); National Commodity v. Gibbs, 886 F.2d 1240, 1249 (10th Cir.1989)(suggesting RICO waiver).
19. See n.8 supra.
20. U.S. v. Bonnano Organized Crime Family, 879 F.2d 20, 22-27 (2d Cir.1989)(U.S.may not sue under RICO), OR'd by Teamsters,3 F.3d at 638 (2d Cir.1993) (U.S. may sue under RICO).
21. Andrade v. Chojnaki, 934 F.Supp.817, 831 (S.D. Tex.1996)(citing Bonnano).
22. Saltany v. Reagan, 702 F.Supp.319, 322 (D.D.C.1988).

of RICO waiver of sovereign immunity.[23]

Here however, RICO suit is brought by a citizen-patriot who proves that army racketeers subvert the army from within, extort $billions from the U.S., and greatly endanger national security. She shows that RICO expressly waives sovereign immunity by subjecting federal government to judicial review for extortion, bribery, and obstruction of justice,[24] that RICO implicitly waives sovereign immunity according to criteria of the High Court [25] and the Circuit below,[26] and that majority rule agrees.[27] Saltany is too tangential to authorize immunity for army healthcare racketeers who extort, endanger, and betray the U.S.

Two of the last three cases cited by the circuit court rely on the third, Berger v. Pierce, which said a RICO claim fails against U.S. government because it is "self-evident...a federal agency is not subject to...prosecution".[28]

Most Circuits disagree.[29] Berger erred because Section 1961(1)(b) predicates liability on indictable acts, not indictable defendants, just as RICO's prototype antitrust law predicates civil

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23. Id. at 321 n.4.
24. See n.2 above and App.12,13.
25. See, Cooper, n.10 above.
26. Navy, Marshall & Gordon v. U.S. Int'l Dev. Coop., 557 F.Supp. 484, 488 (D.D.C.1983).
27. See n.18 above.
28. Berger v.Pierce, 933 F.2d 393,397 (6th Cir.1991).
29. See n.18 *supra*.

liability of an unindictable artificial corporate-person on its agents' acts.

Turkette urged liberal construction of RICO[30] and decried the rigid constructionism that Berger typifies. Legislators expressed their clear intent to establish new civil prohibitions in RICO unfettered by Berger-oid restraints imported from criminal law. 84 Stat.923. The Supreme Court said:

> "[RICO's] *civil* remedies could be useful in eradicating organized *crime*....
> "[RICO] provided civil remedies for use when the circumstances warrant."[31]

Certiorari should be granted to see if military racketeers who extort the U.S. by endangering it warrant RICO remedies.

SOVEREIGN IMMUNITY AS APPLIED HERE IS DANGEROUS.

Berger recommended sanctions for suing federal racketeers.[32] Such sanctions promote racketeering by silencing witnesses who expose it. Silencing witnesses is a strategy of army healthcare racketeers. The sordid history of the

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30. United States v.Turkette, 101 S.Ct.2524, 2531 (1981). See also, Haroco Inc.v.Am.Nat'l Bank, 105 S.Ct. 3912,3922 (1985); Sedima v. Imrex, 105 S.Ct. 3275, 3287 (1985); U.S. v.Swiderski,593 F.2d 1246 (D.C.Cir.1978).
31. Turkette, at 2530 (italics added).
32. Berger v.Pierce, 933 F.2d 393,397 (6th Cir.1991). But see, Saltany v.Reagan, 960 F.2d at 1060 (D.C.Cir. 1992)(Wald,J.,dissenting(sanctions chill suits that expose abuses).

military witness-protection law shows this systemic strategy of coverup. To wit:

DOD and medical Command lied at Congressional Hearings to block passage of that law. App.33-5. With enactment imminent, DOD lied again that it would enforce that law if it were appointed to enforce it. But after DOD was named as enforcer, DOD did not enforce that law with regulations until 1995 (App.16), 3 years after the due date of 1992 mandated by that law (App.16), and then only because Plaintiff aired this fact. DOD also ignored the law's mandates to give each military whistleblower an action-report on his testimony to DODIG, and to put in its action-report to Congress each whistleblower's comment about DODIG response to his testimony. App.16

DOD still does not enforce this military witness-protection law. It uses arbitrary, even retaliatory, excuses for not doing so. App.36. DOD instead lets medical Command violate this law by muzzling and punishing witnesses to its healthcare malpractice and racketeering.

Sovereign immunity promotes this army-wide coverup, by blocking litigants who can expose army healthcare racketeers who endanger the U.S. to extort money.

Certiorari should be granted to study this harmful use of sovereign immunity.

REASONS TO GRANT WRIT OF CERTIORARI

Sovereign immunity of U.S. military healthcare racketeers to RICO is an important issue of national security that has not been, but needs to be, settled by the Supreme Court.

Here, sovereign immunity endangers the sovereign.

It protects army healthcare racketeers who create war-unreadiness to line their pockets. War-unreadiness endangers the nation. These Command racketeers betray the nation by creating war-unreadiness. Army Command that betrays the nation endangers the nation. These healthcare racketeers assign malpractitioners to replace specialists whom they discharge. Malpractice on the fighting force endangers the nation. These racketeers subvert medical, personnel and regulatory support-systems armywide to their ends. A subverted standing army endangers the U.S. Racketeers who erode army support-systems, can erode fighting-force systems. An eroded fighting force endangers the nation. These racketeers subvert the army in full view of friend and foe. Teaching the enemy to subvert the army brings great danger to the U.S.

Here, sovereign immunity infringes on citizens' right under RICO to combat racketeers who malpractice on their army youth, and endanger their country for money. It thus breeds distrust of good federal government, and civil rebellion.

It encroaches on States' rights under RICO to stop federal racketeers who endanger the U.S. to extort money.

It contravenes counsel of this Court to avoid absurd construction of RICO, by protecting racketeers subject to RICO's express waiver of sovereign immunity.

Military witnesses are rare, who survive unfettered power of Command to suppress them, and who prove military healthcare racketeering with party admissions.

This case is a priceless opportunity that is unlikely to resurface again.

CONCLUSION

Certiorari should be granted to weigh the danger of sovereign immunity for military healthcare racketeers. Here, sovereign immunity protects army healthcare racketeers who extort the sovereign by endangering the sovereign. Therefore sovereign immunity here also endangers the sovereign, and strays from its purpose. It also contravenes express RICO waiver of sovereign immunity for armywide predicate acts of obstruction of justice, bribery and extortion.

Respectfully submitted,

Frances S. Norris M.D., J.D.
Colonel (sep.), Army Medical Department
2308 41st St. NW #203
Washington, D.C. 20007
(202) 333-5613

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No.96-5326 September term, 1996
95cv02392
filed May 5,1997
Frances S. Norris, MD,Appellant, v.
Department of Defense et al.,Appellees

BEFORE:

Wald,Williams,and Tatel,Circuit Judges

ORDER

Upon consideration of the motion for summary affirmance and the response thereto, the motion for "default judgement that the three defendants sued in individual capacity are liable as claimed", which the court construes as a motion for partial summary reversal, and the motion to enter a briefing schedule, it is ORDERED that the motion for summary affirmance be granted substantially for the reasons stated by the district court in its memorandum opinion and order, filed October 29 1996, and for the reasons stated in the accompanying memorandum. The merits of the parties' positions are so clear as to warrant summary action. See, Taxpayers Watchdog Inc. v. Stanley, 819 F.2d 294, 297 (D.C.Cir.1987)(per curiam); Waler v. Washington, 627 F.2d 541,545 (D.C.Cir.)(per curiam), cert. denied, 449 U.S. 994 (1980). It is FURTHER ORDERED that the motion "for default judgment" be denied. It is FURTHER ORDERED that the motion for a briefing schedule be dismissed as moot.

The clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing. See D.C. Circuit Rule 41.

PER CURIAM SM, SFU,PW

MEMORANDUM

Appellant's claims for treble damages under the Racketeer Influenced and Corrupt Organizations Act against the Department of Defense, the Army Board for Correction of Military Records("ABCMR"), the Office of the Army Surgeon General, former Secretary of Defense William Perry, and army Surgeon General Alcide LaNoue in their official capacities, are barred by the doctrine of sovereign immunity. See, United States v. Bonnano Organized Crime Family of La Cosa Nost., 879 F.2d 20, 22-23 (2d Cir.1989); Andrade v. Chojnacki, 934 F.Supp 817, 831 (S.D.Tex. 1996); McMillan v. Dept. of the Interior, 907 F.Supp.322, 326 (D.Nev.1995), aff'd, 87 F.3d 1320 (9th Cir.1996)(Table), cert. denied, 117 S.Ct.995 (1997); Saltany v. Reagan, 702 F.Supp.219, 321 (D.D.C.1988), aff'd in part rev'd in part on other grounds, 886 F.2d 438 (D.C.Cir.1989)(per curiam), cert.denied, 495 U.S. 932 (1990). See also, McNeily v. United States, 6 F.3d 343,350 (5th Cir.1993); Berger v. Pierce, 933 F.2d 393, 397 (6th Cir.1991).

The district court did not abuse discretion by failing to enter a default judgment against appellees Perry, Kinneer and LaNoue. Any delay in responding to the Amended Complaint was not wilful. These appellees were not "essentially unresponsive", they alleged meritorious defenses, and appellant was not prejudiced. See, Jackson v. Beech, 636 F.2d 831 835-36 (D.C.Cir.1980).

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FRANCES S. NORRIS,
Plaintiff,

vs.

U.S. DEPARTMENT OF DEFENSE et al.,
Defendants.

Filed Oct.29,1996
Civil Action No.95-2392 (PLF)

MEMORANDUM OPINION AND ORDER:
Plaintiff who is proceeding pro se is a medical doctor who formerly held the rank of colonel in the United States army and chief of nuclear medicine at Reynolds Army Community Hospital in Ft.Sill, Oklahoma. Dr Norris brought this suit as an action under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. 1961 et seq., alleging violations of all four subsections of section 1962, and citing as predicate acts mail fraud, wire fraud, bribery and obstruction of justice. She sues not only the Department of Defense, but also the Army Board for Correction of Military Records, the Office of the Army Surgeon General, and various named army officials some of whom she sues in personal and official capacities.

This case is before the court on Plaintiff's Motion for Partial Summary Judgment, Plaintiff's Motion to Invoke Equitable Estopple, Plaintiff's Motion to Compel, Plaintiff's Motion for Personal Service of Process, Plaintiff's Motion for Sanctions, Defendants' Motion to Dismiss or for Summary Judgment,

Defendants' Supplemental Memorandum Regarding Plaintiff's Individual Capacity RICO Allegations; Defendants' Motion for Protective Order; and Defendants' Motion for an Extension of Time.

I. STANDARD OF REVIEW

Despite the fact that Plaintiff apparently has had some legal education and her arguments are well reasoned, as a pro se plaintiff she nevertheless is entitled to have her complaint judged under "less stringent standards than proceedings drafted by lawyers". Haines v. Kerner, 404 U.S. 519,520 (1972). In considering Defendants' Motion to Dismiss, Plaintiff's factual allegations will be assumed to be true and liberally construed in her favor. Scheur v. Rhodes, 416 U.S. 232, 236 (1974); Phillips v. Bureau of Prisons, 591 F.2d 966, 968 (D.C.Cir.1979). Nevertheless, "a pro se complaint like any other must present a claim upon which relief can be granted by the court". Henthorn v. Department of Navy, 29 F.3d 682, 684 (D.C.Cir.1994)(citations omitted).

II. DISCUSSION

Plaintiff has made clear in her papers and in oral orgument that she asserts claims only under RICO, and, with three exceptions, only against Defendants in official capacities -in effect, against the United States. Plaintiff cites numerous cases in which governmental entities and officials have been found to be "persons" suable or with standing to bring suit under RICO. All of these cases, however, address the status of state, municipal or other local public officials or entities; none of them speaks to the ability to sue the federal government for RICO violations. See eg., United States v. Freeman, 6 F.3d 586, 597 (9th Cir.1993); Illinois Dept. of Revenue

v. Phillips, 771 F.2d 312, 315-16 (7th Cir.1985)(State Dept. was a "person" under RICO for purposes of standing to bring suit); United States v. Altomare, 625 F.2d 5,7 (4th Cir.1980). These cases are therefore inapposite. Since the United States "is immune from suit save as it consents to be sued...", Lehman v. Makshian, 453 U.S. 156,161 (1981)(quoting United States v.Sherwood, 312 U.S. 584, 586 (1941); A&S Counsel Oil Co.Inc. v. Leder, 56 F.3d 234, 238 (D.C.Cir.1995), in order for Plaintiff to maintain an action against the United States, she must establish that the United States has waived its sovereign immunity. A waiver of sovereign immunity "cannot be implied but must be unequivocally expressed" in the relevant statute. United States v. Mitchell, 445 U.S. 535, 538 (1980) (quoting United States v. King, 395 U.S.1,4, (1969); FDIC v. Mayers, 414 S.Ct. 996, 1000-01 (1994); United States Dept. of Energy v. Ohio, 503 U.S. 607, 614 (1992).

The RICO statute contains no express waiver of sovereign immunity, and every court that has considered the issue has recognized that the United States has not waived its sovereign immunity for claims brought under RICO. See, National Commodity and Barter Association v. Gibbs, 886 F.2d 1240, 1246-47 (10th Cir.1989); United States v. Bonnano Organized Crime Family of La Cosa Nostra, 879 F.2d 20, 22-27 (2d Cir. 1989); Harley v. United States Department of Justice, C.A.No.94-0807, Order at *8 (D.C.C.Oct.7, 1994)(Urbana,J,). See also,Berger v. Pierce, 933 F.2d 393, 397 (6th Cir.1991)(federal government cannot be sue under RICO because it cannot be "prosecuted" for predicate acts). Accordingly Plaintiff's amended complaint

must be dismissed as against the United States, the Department of Defense, the Army Medical Department ("AMED"), the Army Board for Correction of Military Records, all other federal departmental entities arguably named by the Plaintiff, and all the individual defendants in their official capacities.

Plaintiff also names as defendants in their individual capacities William Perry, the Secretary of Defense, David R. Kinneer, CEO of the Army Board for Correction of Military Records, and Alcide LaNoue, surgeon general of the United States army, alleging that each of them violated each of the four subsections of 18 U.S.C. 1962.[1]

Plaintiff has failed to sustain her RICO claim against these defendants in their individual capacities.[2] The amended

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1.Plaintiff has moved for sanctions against Defendants because government counsel initially represented to the court that Plaintiff had sued Defendants only in official capacity. Defendants' counsel subsequently filed correction of his inadvertent misstatement with an apology to the court and to Plaintiff. In view of Defendants' apparent good faith mistake and efforts made promptly to redress it, Plaintiff's motion for sanctions will be denied.

2.Defendants argue that federal officials can never be sued in their individual capacities under RICO, and assert that Plaintiff provides no authority for the proposition that they can. The court notes that the authority provided by the defendants is not

complaint alleges only in the most general terms that Secretary Perry was responsible for the actions of his subordinates and failed to investigate Plaintiff's allegations or correct her records, and denied or failed to respond to her requests for redress. See Amended Complaint at 16,54,82,128,144,145,150-51. These allegations of remote supervisory laxity of a Cabinet Secretary are insufficient to sustain a RICO claim. Cf., Cameron v. Thornberg, 983 F.2d 253, 256 (D.C.Cir.1993). Plaintiff alleges that Mr.Kinneer made false statements, removed or omitted documentation from Plain- tiff's personnel file, denied her various administrative appeals, and constructively blocked her reinstatement. Amended Complaint at 16, 128, 129, 138, 144, 150, 151. All these assertions arise out of Plaintiff's dissatisfaction with ABCMR's treatment of her Privacy Act requests in which she sought access to an amendment of her personnel file. The Privacy Act, 5 U.S.C. 552(a), is not on the list of statutes that may serve as predicate acts of "racketeering activity" under RICO, 18 U..S.C. 1961)1); see Danielson v. Burnside-Ott Aviation Training Center, 941 F.2d 1220, 1229 (D.C. Cir.1991) (Service Contract Act provides the exclusive remedy for the violation of its wage provisions, and Plaintiff could not bring a RICO claim based on its violation where the act was not listed in

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2. (cont'd)
dispositive either. See eg., Hefti v. McGrath, 784 F.Supp. 1426, 1433 (E.D.Mo.1992). In view of the disposition of this case on other grounds, the court need not reach this issue.

19 U.S.C. 1981(1). Accordingly, even were the court to accept Plaintiff's allegations about the processing of her Privacy Act requests as reflecting on Mr.Kinneer as an individual, Mr Kinneer is not liable under RICO for alleged violation of the Privacy Act.[3]

Finally, Plaintiff alleges that army Surgeon General LaNoue concealed documents, violated the Freedom of Information Act, the Privacy Act, relied on and thereby perpe- tuated false information, and discharged and/or denied reinstatement of Plaintiff, denied Plaintiff redress, and covered up crimes in Europe, and that his agency promulgated regulations, set policies, engaged in fraud, coersion and other acts to perpetuate the alleged doctor-shortage-bonus scheme. Amended Complaint at 41, 56, 57, 58, 107, 127, 129, 150, 151. As noted above, violations of the Privacy Act do not constitute independent grounds for a

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3.The court further notes that Plaintiff has not alleged or even explained how Mr Kinneer, who is the CEO of the ABCMR, could be said to have invested any income in, acquired or maintained an interest in, or be employed by or associated with the AMED, the alleged RICO "enterprise" in this action. See 18 U.S.C. 1962(a),(b),(c); Danielsen v. Burnside-Ott Aviation Training Center, 941 F.2d at 1229-32; Yellow Bus Lines Inc. v. Drivers, Chauffers and Helpers Local 639, 789-90 (D.C. Cir.1988), vacated in part on other grounds, 913 F.2d 948 (D.C.Cir.1990)(in banc) cert denied, 501 U.S. 1222 (1991).

RICO violation. The same is true with respect to the Freedom of Information Act. See, Danielsen v. Burnside-Ott Aviation Training Center, 941 F.2d at 1229. Surgeon General LaNoue's supervisory decisions -discharging Plaintiff, denying her administrative appeals, setting agency policy- are also not independeent predicate acts under 18 U.S.C. 1961(1).

Construing the Complaint most generously, the only possible predicate acts in this list of wrongdoing lie in Plaintiff's allegation that Surgeon General LaNoue committed wire and mail fraud. Allegations of fraud under RICO, like all other allegations of fraud, however, must meet the paticularity requirements of Rule 9b of the Federal Rules of Civil Procedure. Jepson Inc. v. Makita Corp, 34 F.3d 1321, 1327-28 (7th Cir.1994); Dooley v. United Technologies Corp., 803 F.Supp.428, 441 (D.D.C.1992). Plaintiff's generalized assertions that Surgeon General LaNoue covered up and adopted the fraudulent acts of other army personnel do not reach the requisite level of particularity. Furthermore, "[t]he 'loose references to mailings and telephone calls' in furtherance of a purported scheme to defraud will not do. Instead the plaintiff must within reason describe the time place and content of the mail and wire communications, and [she] must identify the parties to these communications". Jepson Inc. v. Makita Corp.,34 F.3d at 1328 (citations omitted). See,Kowal v.MCI Communications Corp.,16 F.3d 1271, 1278 (D.C.Cir.1994).

The court reads Plaintiff's 152 page Amended Complaint to allege that after seven years of service with AMED,

Plaintiff was discharged based on false allegations about her performance. At the time of her discharge, she was serving under the command of Dr John Bogart who, in turn, had Dr Peter Blue investigate Plaintiff. Amended Com plaint at 31. Plaintiff cites the acceptance and adoption of the Blue report as the basis for her fraud charges against Surgeon General LaNoue. Amended Complaint at 31, 129,150. Even if the Blue Report contained falsehoods, however, the surgeon general's mere failure to repudiate it would not constitute intentional fraud.

Accordingly, it is hereby ORDERED that Defendants' motion to dismiss is GRANTED; it is FURTHER ORDERED that Plaintiff's motion for summary judgment is DENIED; it is FURTHER ORDERED that Plaintiff's motion for sanctions is DENIED; and it is FURTHER ORDERED that this case is DISMISSED from the docket of this court[4]

SO ORDERED.

/s/ Paul L. Friedman
PAUL L. FRIEDMAN
United States District Court Judge

date: 10/28/96

4.All the other outstanding motions in this case are rendered moot and are hereby denied.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No.96-5326 September term, 1996
95cv02392
filed July 23,1997

Frances S. Norris, MD,Appellant, v.
Department of Defense et al., Appellees

BEFORE:
Wald,Williams,and Tatel,Circuit Judges

ORDER

Upon consideration of appellant's petition for rehearing filed June 4 1997, it is ORDERED that the petition be denied. The district court's dismissal of appellant's claims against certain defendants in their individual capacities was summarily affirmed for the reasons stated at pages 4-7 of the district court's memorandum opinion and order filed October 29, 1996.

Per Curiam

FOR THE COURT
/s/: Robert A. Bonner
Deputy Clerk/LD

ORDER

Upon consideration of appellant's suggestion for Rehearing in Banc, and the absence of a request by any member of the court for a vote, it is ORDERED that the suggestion be denied.

Per Curiam

FOR THE COURT
/ s/: Robert A. Bonner
Deputy Clerk

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18 U.S.C. 201. BRIBERY
"(b) Whoever-
"(1)...gives...or promises anything of value to any public official....
"(2)...being a public official... asks....receives...value...for..
(A)being influenced in...official acts...
DEFINITIONS:
(a)(1) "public official" means..., officer...acting for...United States, or any department, agency or branch of government thereof...."

18 U.S.C. 1346. DEFINITION OF "SCHEME"
"For purposes of this chapter, the term 'scheme or artifice' includes a scheme or artifice to deprive another of the intangible right of honest services."

18 U.S.C. 1503. OBSTRUCTION OF JUSTICE
"Whoever...influences, obstructs, or impedes,...due administration of justice, shall be fined...or jailed....

18 U.S.C.1505. OBSTRUCTION OF PROCEEDINGS BEFORE U.S. DEPTS, AGENCIES, AND CONGRESS.
"Whoever...influences, obstructs, or impedes...due and proper administration of the law (at) any pending proceeding... before any department or agency of U.S. or...Congress...

18 U.S.C.1512. TAMPERING WITH A WITNESS
"(a)...intimidation or...force, or threa...to do so, or...misleading conduct..., with intent to -
"(1) influence...an official proceeding;
"(2) cause or induce any person to -
"(a) withhold testimony or...a record... or other object...;
"(b) alter, destroy, mutilate, or conceal an object...in an official proceeding...

"(b)harasses...and...
hinders...
"(1)...testifying in and official proceeding...

18 U.S.C.1518. CRIMINAL INVESTIGATION OF FEDERAL HEALTHCARE OFFENSES
"(a)Whoever...prevents,...or delays... communication of information...relating to a violation of a Federal health care offense to a criminal investigator shall be fined....
b."Criminal investigator" means any individual duly authorized by... or armed force of the U.S. to conduct... investigations...for violations of Federal health care offenses.

18 U.S.C. 24.
DEFINITION OF HEALTH CARE OFFENSE
(a)"Federal health care offense" means... violation...or...conspiracy to violate--
1.section ...1518 (obstructing criminal investigation of...healthcare violation)
2.section...1341/1343 (mail fraud or wire fraud)...in a healthcare...program.
(b)"Healthcare...program" means any public... plan...under which any medical... service is provided...".

18 U.S.C.1951. HOBBS ACT EXTORTION
"(a) Whoever...affects commerce... by... extortion,..."shall be fined...imprisoned....
"(d) As used in this section ...
(2)..."extortion" means the obtaining of property from another with his consent, induced by wrongful use of...fear, or under color of official right."

18 U.S.C. 1961. RICO DEFINITIONS
"(1) "racketeering activity" means
"(A)...
"(B) any act which is indictable under...
18 United States Code section
201 (relating to bribery); ...
1341 (relating to mail fraud);
1343 (relating to wire fraud);
1503 (" to obstruction of justice)
1951 (relating to extortion)....
(3) "Person" includes any individual or entity capable of holding a legal or beneficial interest in property.
(4) "Enterprise" includes any individual, partnership, corporation, association, or other legal entity, ...;

18 U.S.C. 1964. JURISDICTION IN RICO ACTIONS
(C) Any person injured...by a violation of Section 1962 may sue therefore in any appropriate United States district court....

18 USC 2. DEFINITION OF PRINCIPAL
(a) "Whoever commits an offense against the United States or aids and abets..., is punishable as a principal."
"(b) Whoever willfully causes...an offense against the U.S. is...a principal."

42 U.S.C. 11152.
HEALTH CARE QUALITY IMPROVEMENT ACT
(b)Secretary of DHHS shall (write) a memo of understanding with the Secretary of Defense to apply...subchapter II *(ie, hospitals must report malpractitioners)* to hospitals and...providers under the jurisdiction of the Secretary of Defense.

10 U.S.C.1552. CORRECTION OF MILITARY RECORDS

"a)1. (C)orrections shall be made by the Secretary acting through boards of civilians...of that military department.
(a)3. Corrections...procedures must be approved by the Secretary of Defense.

10 U.S.C. 1161. COMMISSIONED OFFICERS: LIMITATIONS ON DISMISSAL
(a) No commissioned officer may be dismissed from the armed forces except-
(1) by...general court martial;
(2) in commutation of (said) sentence;
(3) in...war, by order of the President.
(b) The President may ...(dismiss) (1) one who has been absent without leave for at least 3 months, or (2) one who is sentenced to ...(jail).

10 U.S.C.1034 MILITARY WHISTLEBLOWER PROTECTION ACT, as amended Dec.5, 1991.
(b)(1) No person may take...unfavorable personnel action, or withhold ...favorable personnel action, as a reprisal against a member of the armed forces for-
(B) A communication ...to-
(iv) (anyone)...in...chain of command."
(c) INVESTIGATION OF ALLEGATIONS OF PROHIBITED PERSONNEL ACTIONS.
(2)A communication...in this paragraph... complains ofor discloses...evidence of:
(A) Violation of law or regulation....;
(B) Mismanagement, gross waste of funds, abuse of authority, or substantial and specific danger to public health or safety.
(e)INSPECTOR GENERAL REPORTS
(1)Inspector General shall... report...to the member...who made the allegation....
(4)The report ...shall contain a thorough review of the...complaint...and shall include documents acquired including summaries of interviews conducted.
Pub.L.100-456, Div.A, Title VIII, sec. 845(c), Sept.29, 1988, 102 Stat.203),

provides in pertinent part:
REPORT BY INSPECTOR GENERAL:
DOD-IG shall submit NLT Feb.1,1990 a report to Congress on his (action)... protecting military whistleblowers ..., and include...
(E) the whistleblower's views on DODIG's action.
(f) CORRECTION OF RECORDS.
(1) A board for the correction of military records...may review the matter.
(g) REVIEW BY SECRETARY OF DEFENSE-
[T]he member who made the allegation may submit the matter to the Secretary of Defense. The Secretary shall make a decision to reverse or uphold...."
(i) REGULATIONS.-
Secretary of Defense...shall prescribe regulations to (enforce) this section.
"(c) DEADLINE.-
The regulations ...shall be prescribed NLT 180 days after ...enactment.... *[i.e. by June 1992, 180 days after Dec.5,1991].*

DIRECTIVE 7050.6 on WHISTLEBLOWER PROTECTION, issued August 12, 1995.
(A) RE-ISSUANCE and PURPOSE.
"This...reissues (1992 Directive)...to:
"1.update military whistleblower protection under [the 1991 amendment to] 10 U.S.C. section 1034 ...."
"3.expand...persons...protected...to (those reporting to) chain of command."
"4.Include...mental health evaluation... as a (prohibited) personnel action....
DEFINITIONS (Enclosure 2):
7. Prohibited Personnel Action.
Such... include [non]promotion; disciplinary action; transfer or reassignment; performance evaluation; pay or benefits; mental health evaluations; significant changes in duties or responsibilities inconsistent with...rank.

INSPECTOR GENERAL
Department of Defense
400 Army Navy Drive
Arlington, Virginia 22202-884

Feb 20 1991

Honorable Alan Cranston
United States Senate
Washington, D.C. 20510

Dear Senator Cranston:

Thank you for your letter...

We...issued reports (on) 6 (doctors)....

We found...practitioner credentials files (kept) by the Office of the Army Surgeon General, in violation of...the Privacy Act.

[A]rmy physicians were not notified when malpractice claims were (assigned) to their...practices (after settlement).

[C]ommanders initiated denial of (bonus) pay (unduly). [T]hey placed adverse information in...credentials files...unrelated to the practice of medicine.

Sincerely,

Susan J. Crawford
Inspector General

Enclosures (6 physicians):
1.LTC Butler
2.LTC Swann
3.Major Adrian
4.Major Momii
5.Major Past
6.LTC Clark

INSPECTOR GENERAL
Department of Defense
400 Army Navy Drive
Arlington, Virginia 22202-1884

Oct 25 1990

Honorable John Glenn
Chairman Subcommittee on
Manpower and Personnel
Committee on Armed Servies
United States Senate
Washington, D.C. 20510-6050

Dear Mr.Chairman:

Thank you for uour letter....

(COL Anna Chako deleted) reported mismanagement and improprieties..., and that she was reprised against (sic) for whistleblowing.

[W]e found...reprisal actions were taken..., (and)...improper moonlighting (by radiologists)....

[F]indings (on)...systemic issues... regarding the army medical corps will be provided....

Sincerely,

/s/ D. Van der Schaaf,
for Susan J.Crawford
Inspector General

DOD REPORT TO CONGRESS
ON ARMED FORCES
HEALTH PROFESSIONAL SPECIAL PAY

1 DEC 1988

Table 5-12

Medical Corps authorized and assigned selected specialties - FY 1987

Specialties	overages = (+), shortages = (-)
Anesthesiology	-29

Nuclear Medicine	+12
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p.5-26

Table 5-7

Medical Officer Retention Bonus Plan for FY89

Specialty	"target" shortage-bonus
Surgery	$36,000

Nuclear Medicine	$28,000

REPORT ON RADIOLOGISTS' PRACTICE IN NUCLEAR MEDICINE

BY: COL Frances S. Norris MD
Nuclear Physician
Chief, Nuclear Medicine
Womack Army Community Hospital

SUMMARY
Radiologists' practice on Nuclear Medicine patients is a legal hazard. They have a 23% rate of misdiagnosis, and overall error rate of 34%.
They misdiagnosed 43 soldiers, and did risky inadequate scans on 19 others.

Timeframe was 7 weeks, 6MAR-25APR, 1986.

RECOMMENDATION:
All patients should be recalled.
Radiologists should be trained before being allowed to practice in NucMed.

Duplicate scans were sent to COL Lull, OTSG Consultant for Nuclear Medicine.

Patient	Undiagnosed Dz
1.-	Heart toxicity. Stop chemoRx.
2.--	
3.--	
--	
--	
73.---	

RE: Surveillance of Radionuclide-Users

To: Major Piper, hospital IG and aide to Risk Manager/Deputy CO Cadol

From: LTC Norris, CHIEF, NucMed
21 February 1986

1.At today's meeting I proposed QA of Users' (i.e. radiologists') NucMed competence. I first proposed this a year ago (App.1). The MCC declined to support the proposal, and directed that deficiencies be channeled thru radiologists.

2. Historically this has not worked. The radiologists reject reports of their misdiagnoses and QA needs, and do not forward (reports) to the hospital QA and Credentials Committees.

Eg.,misdiagnosis by COL Goode was reported at Radiology QA meeting (App. 3). It was not recorded or forwarded. Report was sent to Risk Manager (Deputy CO Cadol) who did not respond. I cannot approve [Goode] as User.

3.New policy sent to me from DCCS Cadol and radiologists (App.6,7) bars all future communications from [me].

4. Allow direct communication from (me) the Nuclear Medicine Service to WACH committees. [C]ensorship now threatens WACH's medicolegal status, JCAH accreditation, and NRC (license). Without NucMed uncensored spokesmanship, this threat will be unneutralized by Risk Management and other guardian committees.

HSUA-DCS 29 April 1987

STATEMENT

I, Colonel Rafael Linares, was physically present at a counseling session during which Colonel John Bogart, MEDDAC Commander, apprised Colonel Fran Norris, Chief, Nuclear Medicine Service, of his dissatisfaction. ....

[S]he violated...chain-of-command...by discussing internal MEDDAC matters... with General Rumbaugh (OTSG Chief of Professional Services).

Colonel Bogart (said) he would not recommend her for extended duty. ....

RAFAEL LINARES
Colonel, MC
Deputy Commander for
Clinical Services

FROM:Officer Special Review Board (OSRB)
Re: APPEAL of Feb86 OER by COL Norris
TO: ABCMR

Appellant provided four letters in support of (her) appeal. None of these (four) individuals was in a position...of (her) rating officials, and could not provide...objective analysis of performance.

[T]hey were lab technicians, clerk and a secretary.

[R]ecommend (appeal) be denied.

/s/ JAMES E. BRAYBOY

This OER mostly agreed with preceding OERs which were laudatory and culminated 4 months later in promotion to colonel. But it said she overworked her workers, a comment the COL appealed and the above 4 worker-letters rebutted.

"Performance" is totally irrelevant.

FROM: DA SUITABILITY EVALUATION BOARD
RE: COL Norris: APPEAL of reprimand
TO: ABCMR

Appeal concerns whether OPM allows a clerk-typist to perform OJT.
OPM does, in federal job description.
This may be arguable...but [COL Norris] has had problems with...supervisory and subordinate personnel during her entire career.
False. Supervisors promoted her; her workers support her.
Furthermore she got a 2d LOR in '88.
Irrelevant. OPM allows OJT.
Recommend: Keep the LOR in file.

From:OFFICER SPECIAL REVIEW BOARD (OSRB)
Re: telephonic talk on Norris appeals

COL Cadol: "Nuclear Medicine is...in the Department of Radiology but COL Norris established her own QA program."

(COL Cadol misrepresents by implying COL Norris exceeded her authority by doing NucMed QA. Joint Commission (JCAH) and the Nuclear Regulatory Commission (NRC) required her as Chief to do QA.)

COL Cadol: "Chiefs disregarded her reports and made their own diagnoses. 25 of her cases (had) outside review.

COL Cadol misrepresents number of cases and outside review. 17, not 25, cases were reviewed. Outside review said her radiology accusers misdiagnosed the cases. Cadol was later reprimanded for similar abuse of COL Anna Chako

(Sgt.Pittser,technician): "She did not get along with any enlisted personnel. *All enlisted and civilian workers except Pittser, aka Bubba, strongly supported COL Norris despite known risk of Command reprisal, by their sworn testimony, sworn statements, letters, and most tellingly by telephone from Oklahoma to D.C. where the COL was locked in a psychiatric ward for allegedly abusing them.*

"The SGT requested transfer because it was just too much work. [The COL] would dream up business or ask others for work. She did not have a family and did not care."

COL Norris had 2 daughters and a son living with her. COL Cadol overworked them by ordering them to do Pathology's night tests. He thus endangered thousands of day-patient tests.

DALLAS MORNING NEWS
March 22, 1992 A-1

Whistleblowers Say Military Waging Psychological Warfare

by Ed Timms and Steve McGonigle

Military commanders have tried to discredit whistleblowers and intimidate subordinates by ordering them to undergo psychiatric evaluations or sending them to a mental ward.

Commander Victoria Voge, Gonzalez,Texas
Research by Dr.Voge...concluded that alcohol and drugs (caused) aircraft accidents. [S]he was transferred soon afterward (and) was ordered to undergo psychiatric exam (and) was detained for 24 days in a locked psychiatric ward. Psychiatrists found her fit....

Burton Adrian, Waterloo, Iowa
He is a former army doctor ordered to undergo psychiatric evaluation by his commander in 1989 after he repeatedly complained about sloppy handling of medical cases at the army hospital in Wurtzburg. [H]is commander warned...he was...ruining his medical career. Psychiatric exam was ordered after he insisted...cancer was misdiagnosed.

Cpt. Denise Kirkland, Little Rock, Ark.
Physicians warned not to complain about (bad) patient care.... "You will be sent to a mental ward". [S]he was sent for psychiatric evaluation....

Her boss said "They are going to get you" (after) she complained about (bad) patient care. One (with) chest pain was sent home and died a few days later. The doctor fail(ed) to read an EKG showing heart attack.

EXCERPTED FOOTNOTE 19, DD#55

n.19. At Exh.522(N), Congress authorizes a $77,000 bonus for doctors, total cost of which is over one $Billion per year.

At Exh.520(J), Senate Armed Forces Committee appeases army surgeon generals (and listening voters) by listing costly programs they funded to stop the "war stopping" doctor shortages:

-annually increasing doctor-bonuses;
-higher pay for selected specialties;
-doctor recruiter-bonus programs;
-medical student scholarships;
-medical student loan repayments;
-a military medical school (USUHS);
-hiring civilian doctors (CHAMPUS).

EXCERPTED FOOTNOTE 42, DD#55

n.42. DOD wrote, EXHIBIT 515, that Plaintiff discharge was based on 4 documents: FEB86-OER; JY86-OER; JUN87-OER and OCT87-reprimand. Earlier OERs and prior record led to promotion to colonel in mid-1986.

I.FEB86-OER says harsh with workers.
This is disproven by EXHIBITs at--
p.27,28 (workers' warm defense).

II.JY86-OER...alleged that Plaintiff --
#1.overworked and scared workers;
#2.caused strife with battalion LPN-medics in Honduras assignment.
#3.had poor relations with Radiologists.
#1 is disproven by EXHIBITS at--
p.27-8 (workers' warm defense).
#2 is disproven by EXHIBITS at--
p.85 (CO in Honduras commends N);
p.86 (soldier/patient thanks N);
#3 is disproven by EXHIBITS at--
p.25 [OTSG on radiology turf war);
p.13 (radiology malpractice NucMed)
p.14 (unapproved radiologists in NucMed violates NRC reg).
p.15 (N report of 33% misdiagnoses by untrained Radiologists).

III.JU87 OER said Plaintiff--
#1.threatened NCOIC with a reprimand,
#2.ruled workers by fear,
#3.committed many NRC violations,
#4.embarrassed the CO [by reporting his abuse of command authority to OTSG].
#1 is disproven by EXHIBITS at--
p.20.(CO protects NCOIC's sabotage)
p.20 (radiation safety committee orders N to fire or reprimand NCOIC for radiation-unsafety).
#2 is disproven by exhibits--
(workers warmly defend);
#3 is disproved by exhibits at--

p.21. NRC reports many serious NRC violations <u>before</u> N arrived;
p.20. NRC finds only one minor violation after N arrived.
#4 is illegal retaliation by hospital CO for reporting him to OTSG.

IV. 1987 REPRIMAND, Exh.321, accuses OJT, says job description forbids OJT.
False. Federal job description allows OJT. See Exh.322.

INPATIENT MEDICAL RECORD COVER SHEET

WALTER REED ARMY MEDICAL CENTER

NORRIS, FRANCES S. COL WARD W054

date of admission 18 OCT 1987

Diagnoses:

Axis I
Occupational problem, moderate, chronic, manifested by increasing conflict with her superiors and certain subordinates.
LOD: Yes

Axis II
Compulsive histrionic personality traits manifested by perfectionism which at times interferes with her ability to grasp the picture, demanding high level of performance.

STAFF ATTENDING PHYSICIAN

(signed by)
D.Kranz
21 Dec 87

(reviewed and signed by)
D.McDuff
Chief

(signed by)
Lisa M. Toepp, M.D., attending

DA FORM 3647

DA FORM 3647

WALTER REED ARMY HOSPITAL MEDICAL CHART

PROGRESS NOTES

Nov.14,1987. COL Norris has been cooperative. ....

There is NO evidence of personality disorder.

Dr L.Toepp, examining psychiatrist

INPATIENT MEDICAL RECORD COVER SHEET
WALTER REED ARMY MEDICAL CENTER

		WARD
NORRIS, FRANCES S.	COL	WO54

date of admission 18 OCT 1987

34.Diagnoses

DG 1.
COMPULSIVE PERSONALITY DISORDER

DG 2.
HISTRIONIC PERSONALITY DISORDER

(signed only with double-traced name of)
Jorge L. Fonseca,
Patient Administrator

DEPARTMENT OF ARMY
OFFICE OF THE SURGEON GENERAL
5109 Leesburg Pike
Falls Church, VA 22041-3258

28 Jun 1991

MILITARY REVIEW BOARDS AGENCY
2ND FLOOR 1941 JEFF.DAVIS HYWY
ARLINGTON VA 22202-4508

Advisory Opinion on Norris Frances S.

---

5. ....original diagnosis of ... personality disorders.

6.There is no evidence to support changing the corrected copy of DA Form 3647.

FOR THE SURGEON GENERAL

/s/ Michael J.Kussman, COL MC
for James B. Peake
Colonel MC, Chief
Clinical Policy, Consultant Division

ABSTRACT OF HOUSE HEARING[1] ON PSYCHIATRIC RETALIATION AGAINST MILITARY WHISTLEBLOWERS.

Witnesses are:
1.acting DOD-IG Vander Schaaf,
2.DOD general counsel Mr. Gilliat,
3.OTSG Psychiatry Consultant Dr. Fagan,
4.DepSec. Military Manpower LTG Jones.

DODIG VANDER SCHAAF:
2.Military COs retaliate when whistle-blowers report their misconduct (p.98).
3.But this Bill is not needed because we can already prevent, and have remedied, retaliation by psychiatric means.
REP. BOXER:
17.Why do you oppose judicial review so much? (p.142).
MR GILLIAT:
The existing system in adequate. BCMRs would have to recommend discipline, harming their good relations with Armed Services.
This army lawyer promotes regulatory capture of ABMCR by those it regulates.
REP.BOXER:
What about retaliation by psychiatric evaluation?
MR GILLIAT:
Psychiatric evaluations are outpatient procedures. (p.144). *False*
REP.BOXER:
A CO can order psychiatric evaluation. What does a CO know about psychiatry?
MR GILLIAT:
I don't believe a CO can refer.*False*

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1. Hearing on Whistleblower Protection in the Military, House Committee on Armed Services, Acquisition Panel, 100th Congress, first and second sessions, March 16, 1988.

DR FAGAN (OTSG Psychiatry Consultant):

55. A soldier is first counselled about his behavior and the desired change.

56. If that doesn't work the CO uses a variety of aids- chaplains, IGs, lawyers, other resources (p.692).

57. If a commander refers a soldier to a psychiatrist, the soldier is not packed up and dragged off (p.692).

59. The examining psychiatrist--
1. determines if (he) is dangerous.
2. tells him why he is being evaluated.
3. assesses for fitness-of-duty

70. Hospitals do QA checks on psychiatry.

73. Making COs accountable (for retaliatory psychiatric commitments) would be very difficult.

OTSG's Psychiatrist lied in the above.

55. COL Norris was not counselled.

56. IG, lawyers, etc., did <u>not</u> intervene.

57. COL Norris got 1/2 day notice, and then was packed with others in a truck. After uncomfortable 1.5 day drive from Oklahoma to Walter Reed, she was interrogated on arrival at midnight. The interviewer tried to trick the tired colonel into alleging conspiracy, which psychiatry equates with paranoia, in order to say paranoia justified her needless commitment.

59. No one told COL Norris why she was being evaluated. Her nurse counsellor wrote this as her mental problem, like final Dx did with "occupational problems".

70. OTSG pretends doing "QA checks" but doesn't tally needless admissions? OTSG did not prevent <u>or</u> remedy unnecessary hospitalization/commitment of the Colonel, or prevent <u>or</u> remedy forgery of false psychiatric diagnoses on the COL's record.

73. Coding discharge diagnoses makes it <u>easy</u> to make the CO accountable.

REP.MAVROULIS:
What percent referrals are unnecessary:
DR FAGAN:
I don't know.
OTSG pretends doing QA but doesn't count unnecessary admissions/commitments?
REP. MAVROULIS:
Would you get that for the record?
DR FAGAN:
Yes (p.695)
REP.MAVROULIS:
Its key here (p.695)
OTSG lied; it did not send this key data to Congressional record. It would jeopardize coverup of racketeering.
LT.GEN.JONES:
79.DOD opposes this bill. Chain of command, IG, Congress and UCMJ all protect whistleblowers from psychiatric retaliation. *False*
81.Military whistleblowers are not committed without consent (p.699).*False*
82.Hospital QA already protects whistleblowers from psychiatric commitment. *False*
LTG Jones lied on all 3 points.

SENATE HEARING[2] ON
USE OF PERSONALITY DISORDERS
TO DISCHARGE MILITARY.

SEN.LEVIN:
How many military were separated with "personality disorder" in 1985-89.
SURGEON GENERAL LEDFORD:
10,024 soldiers.
Officers are not included because they aren't discharged like enlisted.
S.G.Ledford lied. He knows officers, especially his medical officers, are discharged with "personality disorder.

2.Senate Hearings on DOD Authorization Bill, Senator Armed Forces Committee, June 20, 1990, at 731.

DEPARTMENT OF THE ARMY
Board for Correction of Military Records
1941 Jefferson Davis Hywy, 2d floor
Arlington, VA 22202-4508

Dear Dr. Norris:

[Y]our letter...request(s) reconsideration of your application for correction of military records.

DOD Directive 7050.6 implementing the 1991 amendment to the Military Whistleblower Protection Act was reissued 12 August 1995 to include...other protected communications.

[Y]ou filed appeal (sic) in the the U.S. District Court. [N]o action will be taken...until (it is) resolved.

/s/David Kinneer
ABCMR Executive Secretary

ACRONYMS

ABCMR.	Army Board for Correction of Military Records
AMED	army medical department
COL	colonel
DA	Department of Army
DOD	Department of Defense
HCQIA	HealthCare Quality Improvem't Act
IG	inspector general
ISP	incentive special pay (bonus)
LOR	letter of reprimand
LTC	lieutenant colonel
NCOIC	noncommissioned officer in charge
NRC	Nuclear Regulatory Commission
NucMed	Nuclear Medicine
OER	officer evaluation report
OJT	on job training
OMPF	official military personnel file
OPM	Office of Personnel Management
OSRB	Officer Special Review Board
SG	surgeon general